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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/585,120

05/29/2007

Lars Bo Poulsen

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EXAMINER

CHAPMAN, GINGER T

ART UNIT

PAPER NUMBER

3761

MAIL DATE

DELIVERY MODE

10/29/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/585,120	Applicant(s) POULSEN ET AL.	
	Examiner Ginger T. Chapman	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on 30 June 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>01/23/2007</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Status of the claims

1. Claims 1-11 are pending in the application.

Drawings

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: “72”. In particular, the Specification, at page 9, line 18, discloses two areas 72 in which no ribs are present. Page 9, line 21 recites open end of the pre-filter 70, which is depicted in Figure 8. See also p. 9, ll. 23, 26, 27 and 29 reciting “72”.
3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference characters “42” and “4” have both been used to designate gas entrance. In particular, See Figure 12 for reference character “4”, and p. 11, l. 3 for gas entrance. This appears to be a typographical error in Figure 12.
4. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

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Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. Claims 1-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jensen et al (US 4,411,659).

8. With respect to claim 1, as best depicted in Figures 1 and 5-7, Jensen discloses an ostomy device comprising a collecting bag and a gas filtering assembly positioned in a gas path 17—23 from the an interior of the collecting bag to the surroundings (fig. 1), a pre-filter (fig. 6) and a gas filter 26 (figs 1 and 6), wherein the pre-filter (fig. 6) comprises a gas entrance 23 and a gas exit 42, and therebetween, a gas channel 25 (fig. 6) having two opposed, substantially liquid-impermeable surfaces 30, 35 defining there between a number of constrictions. 32, 33 each having a predetermined, largest width (fig. 7).

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9. Jensen discloses the claimed invention except for expressly disclosing the distance between the two opposed surfaces, at the constrictions, is significantly smaller than the largest width of the constriction. Jensen teaches, at c. 5, ll. 4-8, that the constrictions, referred to as ribs in the cited passage, prevent obstruction of the gas pathway and filter. Jensen further teaches, at c. 5, ll. 15-18, that the constrictions / ribs prevent trap effluent, i.e. liquid and solid bodily waste in the spaces between the ribs before the effluent reaches and clogs the filter and directs the effluent to drain down into the collecting chamber of the ostomy bag. Jensen teaches that this allows gas to easily pass through an unclogged gas filter.

10. One of ordinary skill in the art at the time the invention was made would have recognized that if the distance between the constrictions /ribs is too wide, then solids would not be trapped within the ribs and would pass through the ribs to reach the filter and clog the filter. One of ordinary skill in the art at the time the invention was made would have also recognized that if the distance between the constrictions /ribs is too narrow, then solids would not be able to be trapped within the ribs to be directed to flow downward; instead the solids would build up against the surface of the pre-filter in the same manner that they would build up against the filter due to pressure of gas expanding within the bag. Thus the pre-filter would then be clogged by effluent thereby reducing the passage of gas through the pre-filter. Additionally, one of ordinary skill in the art would have recognized the benefit of optimizing the distance between the constrictions /ribs for their function as an effluent filter in the same manner that filters are known and designed in many sizes to separate a desired size of particulates from gas and fluid streams. Thus, the parameter of filter “pore size” is a result-effective variable and as such, it would have been obvious to optimize. *In re Boesch*, 205 USPQ 215 (CCPA 1980).

Finally, the Federal Circuit has held that, where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device. *Gardner v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), *cert denied*, 469 U.S. 830, 225 USPQ 232 (1984).

11. With respect to claim 2, as best depicted in Figure 5, Jensen discloses the gas channel is oblong; see space between elements 33 and 32.

12. With respect to claim 3, as best depicted in Figure 5 and disclosed at c. 4, l. 53-54, Jensen discloses at least one of the constrictions 32, 33 comprises a rib extending along one of the opposed surfaces.

13. With respect to claims 4 and 5, as best depicted in Figure 5, Jensen discloses the rib 32 extends along the direction of flow in the gas channel and wherein the rib 33 extends across the direction of flow in the gas channel.

14. With respect to claim 6, as best depicted in Figure 7 and disclosed at c. 4, ll. 60-67, Jensen discloses at least one constriction 33 has a cross section having, at one side thereof, a concave part 33a adapted to receive solid or liquid material.

15. With respect to claim 7, as best depicted in Figure 3 (16) and Figure 6 (30), Jensen discloses the constrictions are provided only at a predetermined area of the opposed surfaces.

16. With respect to claim 8, as best depicted in Figures 7 and 6, Jensen discloses the constrictions in the gas channel have different lengths, the longer constrictions being positioned closer to the entrance than the constrictions of shorter lengths.

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17. With respect to claim 9, Jensen discloses at c. 4, ll. 53-54, the constrictions 32, 3 are provided as a monolithic element.

18. With respect to claim 10, as best depicted in Figures 6 and 7, Jensen discloses one of the opposed surfaces 33 is defined by part 23 of a wall 12 of the bag, and wherein the monolithic element 30 forms the other of the opposed surfaces 32 and further comprises means 43, 41, 42, 28 for engaging or attaching to the part 23 of the wall 12 so as to define the gas channel 25.

19. With respect to claim 11, Jensen teaches the monolithic element 30 is at least substantially flat having two main sides, teaching the element is a disc which is recognized to be substantially flat in the such manner that, by way of example, a coin is substantially flat and has two main sides, and having one or more constrictions 32, 33 on each of the two main sides (fig. 5 and at c. 4, ll. 56-59).

Conclusion

20. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

21. Leisner et al (US 6,135,986) figs. 1, 9 and 11. Nystrup et al (WO 01/34072 A1) figs. 1-19. Kanbara; US 2003/0014023 A1: figs. 2A, 2B. Norton (US 5,549,587) figs. 1-10. Nolan (US 3,952,727) figs. 3-4. Stemmer et al (US 6,156,089) figs. 3-6.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ginger T. Chapman whose telephone number is (571)272-4934. The examiner can normally be reached on Monday through Friday 9:30 a.m. to 6:00 p.m..

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ginger T Chapman/

Examiner, Art Unit 3761

10/25/08

/Tatyana Zalukaeva/

Supervisory Patent Examiner, Art Unit 3761